

110TH CONGRESS  
1ST SESSION

# S. 729

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

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IN THE SENATE OF THE UNITED STATES

MARCH 1, 2007

Mr. SALAZAR introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To better provide for compensation for certain persons injured in the course of employment at the Rocky Flats site in Colorado.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Rocky Flats Special  
5       Exposure Cohort Act”.

6       **SEC. 2. FINDINGS AND PURPOSE.**

7       (a) FINDINGS.—Congress makes the following find-  
8       ings:

9               (1) The Energy Employees Occupational Illness  
10       Compensation Program Act of 2000 (42 U.S.C.

1       7384 et seq.) (referred to in this section as the  
2       “Act”) was enacted to ensure fairness and equity for  
3       the civilian men and women who, during the past 50  
4       years, performed duties uniquely related to the nu-  
5       clear weapons production and testing programs of  
6       the Department of Energy and its predecessor agen-  
7       cies by establishing a program that would provide ef-  
8       ficient, uniform, and adequate compensation for be-  
9       ryllium-related health conditions and radiation-re-  
10      lated health conditions.

11           (2) The Act provides a process for consideration  
12      of claims for compensation by individuals who were  
13      employed at relevant times at various locations, but  
14      also includes provisions designating employees at  
15      certain other locations as members of a Special Ex-  
16      posure Cohort whose claims are subject to a less-de-  
17      tailed administrative process.

18           (3) The Act also authorizes the President, upon  
19      recommendation of the Advisory Board on Radiation  
20      and Worker Health, to designate additional classes  
21      of employees at Department of Energy facilities as  
22      members of the Special Exposure Cohort if the  
23      President determines that—

1 (A) it is not feasible to estimate with suffi-  
2 cient accuracy the radiation dose that the class  
3 received; and

4 (B) there is a reasonable likelihood that  
5 the radiation dose may have endangered the  
6 health of members of the class.

7 (4) It has become evident that it is not feasible  
8 to estimate with sufficient accuracy the radiation  
9 dose received by employees at the Department of  
10 Energy facility in Colorado known as the Rocky  
11 Flats site for the following reasons:

12 (A) Many worker exposures were  
13 unmonitored or were not monitored adequately  
14 over the lifetime of the plant at the Rocky Flats  
15 site. Even in 2004, a former worker from the  
16 1950s agreed to be scanned under the former  
17 radiation worker program of the Department of  
18 Energy and was found to have a significant in-  
19 ternal deposition of radiation that had been un-  
20 detected and unrecorded for more than 50  
21 years.

22 (B) No lung counter for detecting and  
23 measuring plutonium and americium in the  
24 lungs existed at Rocky Flats until the late  
25 1960s. Without this equipment, the very insol-

1        ule oxide forms of plutonium cannot be de-  
2        tected, and a large number of workers had in-  
3        halation exposures that went undetected and  
4        unmeasured.

5            (C) Exposure to neutron radiation was not  
6        monitored at the Rocky Flats site until the late  
7        1950s, and most of those measurements  
8        through 1970 have been found to be in error.  
9        In some areas of the plant at the site, the neu-  
10       tron doses were as much as 2 to 10 times as  
11       great as the gamma doses received by workers,  
12       but only gamma doses were recorded.

13           (D) Radiation exposures of many workers  
14       at the Rocky Flats site were not measured (and  
15       in some cases estimated doses were assigned),  
16       while some records have been destroyed or lost.  
17       As a result, the exposure histories and other  
18       data available are not adequate to determine  
19       properly whether Rocky Flats workers qualify  
20       for compensation under the Act.

21           (E) The model that has been used for dose  
22       reconstruction by the National Institute for Oc-  
23       cupational Safety and Health (referred to in  
24       this section as the “Institute”) in determining  
25       whether Rocky Flats workers qualify for com-

1           pensation under the Act is in error. The default  
2           values used for particle size and solubility of  
3           the internally deposited plutonium in workers  
4           are in error. Use of these erroneous values to  
5           calculate internal doses for claimants can result  
6           in dose calculations of as much as 3 to 10 times  
7           below what the Rocky Flats records and au-  
8           topsy data indicate.

9           (5) The administrative costs related to Rocky  
10          Flats claims have been disproportionately high rel-  
11          ative to the number of claims that have been proc-  
12          essed.

13          (6) Some Rocky Flats workers, despite having  
14          worked with tons of plutonium and having known  
15          exposures leading to serious health effects, have  
16          been denied compensation under the Act as a result  
17          of potentially flawed calculations based on records  
18          that are incomplete or in error, as well as the use  
19          of incorrect models.

20          (7) Achieving the purposes of the Act with re-  
21          spect to workers at Rocky Flats is more likely to be  
22          achieved if claims by those workers are subject to  
23          the administrative procedures applicable to members  
24          of the Special Exposure Cohort.

1 (b) PURPOSE.—The purpose of this Act is to revise  
 2 the Energy Employees Occupational Illness Compensation  
 3 Program Act of 2000 to include certain Rocky Flats work-  
 4 ers as members of the Special Exposure Cohort.

5 **SEC. 3. DEFINITION OF MEMBER OF SPECIAL EXPOSURE**  
 6 **COHORT.**

7 (a) IN GENERAL.—Section 3621(14) of the Energy  
 8 Employees Occupational Illness Compensation Program  
 9 Act of 2000 (42 U.S.C. 7384(14)) is amended by adding  
 10 at the end the following new subparagraph:

11 “(D) The employee was so employed for a  
 12 number of work days aggregating at least 250  
 13 work days before January 1, 2006, by the De-  
 14 partment of Energy or a Department of Energy  
 15 contractor or subcontractor at the Rocky Flats  
 16 site in Colorado.”.

17 (b) AUTHORITY TO REAPPLY.—A claim that an indi-  
 18 vidual qualifies, by reason of section 3621(14)(D) of the  
 19 Energy Employees Occupational Illness Compensation  
 20 Program Act of 2000, as added by subsection (a), for com-  
 21 pensation or benefits under such Act shall be considered  
 22 for compensation or benefits notwithstanding any denial  
 23 of any other claim for compensation with respect to such  
 24 individual.

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